Supreme Court, U.S
FILE

No. 01 113 JUL 18 2001

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

Olga Browne,

Petitioner,

v.

New York State Mental Health, et al

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Second Circuit

Petition for Writ of Certiorari

Olga Browne
39 South 29th Street,
Wheatly Heights, NY 11798
Tel. (631) 253-3221
Pro se

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19 pp

Questions Presented

1. Whether an admission by a party opponent may be overruled by the court as a matter of due process?

2. Whether, in a preliminary stage, when no facts are in dispute, a court may decide the evidence without a jury and contra to the undisputed facts?

3. Whether, based on undisputed facts in favor of petitioner, the outcome may be to the contrary as a matter of due process?

List of Parties

4. All parties do not appear in the caption of the case on the cover page. A list of parties to the proceedings in the court whose judgment is the subject of this petition is as follows.

Petitioners:

Olga Browne

Respondents

New York State of Mental Health, Bronx Psychiatric Center, The New York Department of Civil Service, New York State of Audit and Control.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
1. McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S. Ct. 1817, 1824 (1973).	11
2. Robinson v. Time Warner, Inc., 92F. Supp. 2d 318, 332 (S.D.N.Y. 2000);	11
3. Ford v. Bernard Fineson Dev. Ctr., 81 F. 3d 304, 307 (2d Cir. 1996).	11

STATUTES AND RULES

1. 28 U.S.C., 1332, 1331, 1367	10
2. 28 U.S.C. 1254 (1)	2
3. 42 U.S.C. 1981 and 1983	5

OTHER

U.S. Constitution (Fourth, Fifth, Fourteenth Amendment) 1 - 2

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SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully prays that a writ of certiorari issue to review the judgments below.

OPINIONS BELOW

The judgment of U. S. District Court Southern District of New York as Appendix "B" to the petition and is unpublished.
The decision of the United States court of appeal, appears as "A" and is not published.

JURISDICTION

The date on which the United States Court of Appeals decided my case was 05/17/01.

No petition for rehearing was filed in this case.
The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Petitioner has a constitutional right for due process.

STATEMENT OF THE CASE

BACKGROUND

1. This is a case brought by a petitioner pro se litigant, for discrimination in employment on account of race, color, gender, and national origin.

2. Petitioner alleged a pattern of continuos discrimination and all kind of abuse including but not limited to: failure to promote, retaliation, hostile work environment, harassment, threats, pressure to resign, which continues till this day.

3. Petitioner was and is subject to hostile work environment permeated with ridicule, humiliation, harassment, and acts of retaliation, assaults, derogatory remarks bogus disciplinary actions, cursing, etc. which continues to this days. And petitioner believed that based on the undisputed facts she will prevail but because of undue process her rights were denied.

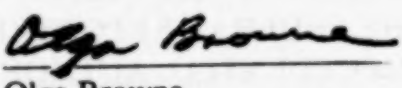
REASONS FOR GRANTING THE PETITION

4. The uniqueness of the case, and the strong probability to prevail on appeal, if due process is applied.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.



Olga Browne,
39 South 29th Street
Wheatley Heights, NY 11798
Tel.: (631) 253-3221
Pro se

Date: July 15, 2001

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 17th day of May, two thousand one.

Present: HON. RALPH K. WINTER,
HON. CHESTER J. STRAUB,
HON. ROSEMARY POOLER,
Circuit Judges.

(STAMPED) U.S. COURT OF APPEAL
Filed May 17, 2001 SECOND CIRCUIT

OLGA BROWNE,

Plaintiff-Appellant,

SUMMARY ORDER

- v - No. 00-9124

NEW YORK STATE OFFICE OF MENTAL HEALTH; BRONX PSYCHIATRIC CENTER; THE NEW YORK STATE DEPARTMENT OF CIVIL SERVICE; NEW YORK STATE DEPARTMENT OF AUDIT CONTROL,

Defendants-Appelless.

APPENDIX "A"

Appearing for Plaintiff-Appellant:	Olga Browne, pro se, Wheatley Heights, NY.
Appearing for Defendants-Appellees:	Eliot Spitzer, Attorney General of the State of New York (Mark Gimpel and Michael S. Belohlavek. Deputies Solicitor General, and Patrick J. Walsh, Assistant Solicitor General, of counsel), New York, NY.

Appeal from United States District Court for the Southern District of New York (John s. Martin, *Judge*).

AFTER SUBMISSION AND UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the district court hereby is, AFFIRMED.

Plaintiff-Appellant Olga Browne, *pro se*, appeals from a judgment of the United States District court for the Southern District of New York (John S. Martin, *Judge*) granting summary judgment in favor of defendendants-appellees and dismissing her employment discrimination action brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq*. Ms. Browne, a black woman who was born in Panama to parents who were Jamaican citizens, alleged that the defendants-appellees failed to promote her, treated her unequally in the terms and conditions of her employment, and retaliated against her based on her race, gender, national origin, and color. The District Court held that her claims relating to incidents that occurred prior to September 1995 was time-barred.

The District Court also found that the remaining incidents were not actionable because they did not amount to adverse employment actions.

On appeal, Ms. Browne argues that her claims are not subject to any statute of limitations because they allege continuing discrimination based on an ongoing pattern of abuse, and that she presented a *prima facie* case of discrimination and retaliation sufficient to survive summary judgment.

We review orders granting summary judgment *de novo* and determine whether the district court properly concluded that there was no genuine issue as to any material fact and the moving party was entitled to judgment as a matter of law. *Corcoran v. New York Power Auth.* 202 F. 3d 530, 536 (2d Cir. 1999), *cert. denied*, 529 U.S. 1109 2000.

The District Court correctly determined that the majority of the allegations in Ms. Browne's complaint, including her failure to promote claim, were time-barred because the discriminatory acts she alleged occurred more than 300 days prior to her having filed a complaint with the New York State Division of Human Rights. *See* 42 U.S.C. § 2000e-5(E)(1). Although not specifically addressed by the District Court, Ms. Browne's claims do not fit within the

"continuing violation" exception, which extends the limitations period for all claims of discriminatory acts committed under an ongoing policy of discrimination even if the individual acts would themselves be time-barred. Ms. Browne, however, has failed to identify an ongoing policy of discrimination or to establish that the untimely incidents of discrimination were continuous in time with one another or with the timely acts she alleged. *See Quinn v. Green Tree Credit Corp., 159 F.3d 759, 765-66 (2d Cir. 1998).*

The District Court properly dismissed Ms. Browne's timely claims as well. Ms. Browne failed to refute that there had been no vacancies in a position to which she could have been promoted since 1987. The District Court also properly dismissed Ms. Browne's remaining claims that (1) she was improperly directed to prepare an initial nutritional evaluation of a patient well after the time by which such evaluation should have been prepared; (2) her employer improperly discussed her past performance record at an administrative hearing; and (3) her employer improperly prepared her employee evaluation in 1999. As the District Court correctly found, Ms. Browne failed to establish that she suffered an adverse employment action, as required to state a prima facie case of discrimination or retaliation under Title VII. See, e.g., Cruz v. Coach Stores, Inc., 202 F. 3d 560, 565-66 (2d Cir. 2000) (summarizing prima facie requirements, including the requiremen that

an adverse employment action occurred, for failure to promote and retaliation claims).

Moreover, the factual issues raised by Ms. Browne did not preclude summary judgment because they were not material to the legal issues raised in her case. Accordingly, the judgment of the District Court is hereby AFFIRMED.

FOR THE COURT:

ROSEANN B. MACKECHNIE CLERK

(signed) 5/17/01

By: Date

APPENDIX "B"

(STAMPED) U.S. DISTRICT COURT
Filed Jul. 31, 2000 S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

OLGA BROWNE, 97 CIVIL 7302 (JSM)

Plaintiff,

JUDGMENT

- against -

NEW YORK STATE OFFICE MENTAL HEALTH, BRONX PSYCHIATRIC CENTER, NEW YORK STATE DEPARTMENT OF CIVIL SERVICE, and NEW YORK STATE DEPARTMENT OF AUDIT & CONTROL

Defendants.

----------X

Whereas the above-entitled action having come before the Honorable John S. Martin, United States District Judge, and the Court thereafter on July 28, 2000 having rendered its Memorandum Opinion (84288) and Order dismissing the complaint, it is,

ORDERED, ADJUDGED AND DECREED: That pursuant to the Court's Memorandum Opinion (84288) and Order dated July 28, 2000, the complaint is dismissed.

JAMES M. PARKISON

Dated: New York, New York
July 31, 2000

Clerk of Court
By: Signed

Deputy Clerk

THIS DOCUMENT WAS ENTERED ON THE DOCKET ON 8/3/00

APPENDIX "B"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

OLGA BROWNE,

Plaintiff,

97 Civ. 7302 (JSM)

MEMORANDUM OPINION AND ORDER

- v. -

NEW YORK STATE OFFICE MENTAL HEALTH, BRONX PSYCHIATRIC CENTER, NEW YORK STATE DEPARTMENT OF CIVIL SERVICE, and NEW YORK STATE DEPARTMENT OF AUDIT & CONTROL

Defendants.

----------X

JOHN S. MARTIN, Jr., District Judge:

Olga Browne, a dietitian employed at the Bronx Psychiatric Hospital, brings this action for employment discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., alleging that she has been discriminated against for over twenty years because she is a black Panamanian.

Under the familiar burden-shifting framework for analyzing summary judgment motions in employment discrimination cases, a plaintiff must first establish a prima facie case of discrimination by showing that (1) she belongs to a protected class; (2) her job performance was satisfactory; (3) she suffered an adverse employment decision; and (4) the adverse employment decision

occurred under circumstances giving rise to an inference of discriminatory intent. See McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S. Ct. 1817, 1824 (1973). In addition, before bringing a civil action, the employee must pursue available administrative remedies by filing a charge with the Equal Employment Opportunity Commission or the New York State Division of Human Rights, and the discriminatory action must have occurred within 300 days of the filing of the administrative charge. See 42 U.S.C. § 2000e-5 (e) (1); Ford V. Bernard Fineson Dev. Ctr., 81 F. 3d 304, 307 (2d Cir. 1996). Here, Plaintiff filed a complaint with the Division of Human Rights on July 9, 1996. Thus, any claims relating to incidents that occurred prior to September 1995 are time-barred.

While Plaintiff alleges that she was passed over for promotion on numerous occasions over the years, there have been no vacancies in a position to which Plaintiff could be promoted since 1987. Thus, any claim that Plaintiff was discriminated against when she was denied promotion is time-barred.

The only other events to which Plaintiff referred in her administrative charge are not actionable because they do not amount to adverse employment actions. See Robinson v. Time Warner, Inc., 92F. Supp. 2d 318, 332 (S.D.N.Y. 2000); see also Torres v. Pisano, 116 F. 3d 625, 640 (2d Cir. 1997). First, Plaintiff contends that she was improperly directed to prepare an initial nutritional evaluation of

a patient well after the time such initial evaluations should have been prepared. However, this did not in any way impact the conditions of Plaintiff's employment.

Similarly, Plaintiff's complaints about the way that her employer responded to her charges at an administrative hearing did not affect the conditions of her employment. Finally, her complaints about the preparation of her employee evaluation in 1999 do not indicate that she suffered any adverse consequence therefrom.

For the foregoing reasons, the complaint is dismissed.

SO ORDERED.

Dated : New York, New York
July 28, 2000.

(signed)

JOHN S. MARTIN, JR., U.S.D.J.

APPENDIX "C"

SUMMARY JUDGMENT

1. Defendant failed to respond to plaintiff's contentions that the court erred in entering a summary judgment as they request, and in doing so admitted impliedly that D.C. erred in entering a summary judgment. Defendant switch to the marginal issue whether the allegation raise an issue of "adverse employment action".

2. It is obvious that plaintiff's testimony along with her documents, affidavits, depositions, and EEOC decision that states "There is probable cause to believe that the respondent engaged or are engaging in the unlawful discrimination practices," met the minimal burden required to established of a Pima facie case. (Appendix 43)

ADVERSE EMPLOYMENT ACTION

3. Plaintiff alleges that (Provision 9 in her brief) she was skipped" promotions at least 6 times, and was subject to a hostile work environment permeated with ridicule, humiliation, harassment, bogus disciplinary actions, derogatory remarks etc. and D.C. erred when disregarded all these allegations or for deciding that these allegations do not amount to an adverse employment action.

4. the three page decision by D.C. do not indicate that the court took into consideration the relevant facts and it seems as an arbitrary and capricious decision.

STATUTE OF LIMITATION

5. Plaintiff alleges a continuous pattern and practice of abuse and discrimination against her and thus no statute of limitation will apply to a "Tendency to discriminate". Plaintiff shows that defendant had a tendency to discriminate against her and whenever defendant had an opportunity defendant discriminated against her. However, D.C. find that despite the tendency to discriminate, it happened so that in the last year or so because no vacancies were available defendant should be exonerated from the tendency to discriminate because defendant discriminated only when it had opportunity to do so and not when no such opportunity was available. This kind of reasoning by the court sounds like a joke.

6. It seems that D.C. regards only the failure to promote as a valid cause of action and not the other legitimate causes of action that plaintiff raises.

CONCLUSION

D.C. decision should be vacated and remanded for continuation.